

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 10/1/2013	(3) CONTACT/PHONE Paavo Ogren, Director of Public Works (805) 781-5252	
(4) SUBJECT Receive a Paso Robles Groundwater Basin Management Plan Implementation Update. Districts 1 and 5.			
(5) RECOMMENDED ACTION It is our recommendation that your Honorable Board, acting as the San Luis Obispo County Flood Control and Water Conservation District (Flood Control District) receive a Paso Robles Groundwater Basin Management Plan implementation update and provide staff direction as you deem appropriate.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input checked="" type="checkbox"/> Board Business (Time Est. 265 min.)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: 8/27/13; # 13	
(17) ADMINISTRATIVE OFFICE REVIEW <i>Nikki J. Schmidt</i>			
(18) SUPERVISOR DISTRICT(S) District 1 - District 5 -			

Reference: 13OCT01-BB-1

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works
Paavo Ogren, Director of Public Works

DATE: 10/1/2013

SUBJECT: Receive a Paso Robles Groundwater Basin Management Plan Implementation Update.
Districts 1 and 5.

RECOMMENDATION

It is our recommendation that your Honorable Board, acting as the San Luis Obispo County Flood Control and Water Conservation District (Flood Control District) receive a Paso Robles Groundwater Basin Management Plan implementation update and provide staff direction as you deem appropriate.

DISCUSSION

On March 27, 2012, your Board, sitting as the Flood Control District, adopted a Groundwater Management Plan (Basin Plan) for the Paso Robles Groundwater Basin (Basin) pursuant to Assembly Bill 3030 (AB 3030), which was established by State Legislation in 1992 to encourage and provide a systematic way of managing groundwater basins throughout California. The Basin Plan was funded by the California Department of Water Resources (DWR) through a grant with the City of Paso Robles. On May 1, 2012, the City also adopted the Basin Plan. The Plan complies with Senate Bill 1938 (2002), which is required to seek DWR grants for groundwater projects and groundwater quality projects. Your Board created a Blue Ribbon Committee (BRC) to help steer implementation of the Plan, and status updates have been provided to your Board.

Most recently, on August 27, 2013, staff provided a report including a recommendation to issue Requests for Qualifications (RFQ) for consultant teams to prepare a feasibility study on water supply options, consistent with Chapter 7 of the Basin Plan's Implementation. In addition, staff provided a summary on governance options. After discussion and public comment, your Board approved staffs' recommendation to issue the RFQ and also directed staff to return to the Board to discuss the following items relating to the future governance of the Basin:

- A. Goals and Objectives – What should a groundwater management district seek to accomplish?
- B. Case Review – Adjudication of the Santa Maria Groundwater Basin (SMGB); which of its outcomes may be applicable and provide guidance on the Paso Robles Groundwater Basin?
- C. Water Allocations – May any of the governance options determine water allocations?

In response to your Board's August 27, 2013 approvals, staff has issued the RFQ's through the County's Purchasing Department and has conducted a pre-submittal meeting for interested consultants. The current goal is to select the consultant team and obtain your Board's approval by the end of the calendar year so that the feasibility work can commence in January 2014 and be completed by the end of 2014. Staff has also prepared this staff report on the three governance elements as directed by your Board on August 27, 2013.

Governance – Background

At the May 7th update to your Board, the BRC provided a letter which included a status update on its work efforts and the following request:

“It is the request of the Blue Ribbon Committee that the Board of Supervisors immediately provide the necessary financial and technical support to implement a Groundwater Management District with participation of all of the stakeholders in the basin.”

Some of the discussions, and public comment, identified the need for a District with “teeth,” which generally characterized and recognized the need for a District that could establish, require and enforce basin management activities needed to ensure that the groundwater levels are stabilized. On May 5th, your Board directed staff to provide a comparative analysis, and on August 27, 2013 that analysis was provided on a range of options for a groundwater management district (Attachment “A”).

The general conclusion staff reached in preparing the comparative review of district options in Attachment “A” is that it is more difficult to draw a quick conclusion on which district option is “best” and that it is easier to conclude that the mechanism by which a district would likely best be able to grow teeth would be through the adoption of a robust AB 3030 Plan and/or through special legislation.

On August 27, 2013, your Board, acting as the County and not the Flood Control District, adopted an Urgency Ordinance to restrict uses that would increase pumping. The adoption of the Urgency Ordinance was based on the County's police powers and zoning authority and not based on groundwater management activities identified in the Flood Control District's Basin Plan. Consequently the discussion of the three governance issues, below, relating to the possible formation of a groundwater management district, are based on AB 3030 and related Water Code Sections (WCS) and not the County's zoning authority or general police powers.

Goals and Objectives – What should a Groundwater Management District seek to accomplish?

Similar to many aspects of local government, establishing goals and objectives should include a review of applicable laws and statutes. The legislative intent of AB 3030 groundwater management plans is expressly stated in WCS 10750, as follows:

“It is the intent of the Legislature to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdictions.”

In addition, AB 3030 and subsequent amendments include details on groundwater management activities that should be considered in developing plans. Recent discussions at the BRC and at your Board meetings have also expressed a need for the governing board of a groundwater management district to provide fair representation for basin stakeholders. As a result, the following two goals for a groundwater management district have been prepared for discussion purposes.

Goal #1 - Develop a more robust AB 3030 Groundwater Management Plan (i.e. with teeth)

Goal #2 - Establish Fair Representation on the Groundwater District's Governing Board

Together these two goals emphasize the importance of following the legislative guidance in AB 3030 and the water code and establishing a groundwater management district that is poised to succeed. Goal #1 is discussed along with nine (9) Objectives that staff has prepared for discussion purposes and Goal #2 has been prepared with several "points of discussion."

Goal #1 – Develop a more robust AB 3030 Groundwater Management Plan

Developing a more robust AB 3030 Plan for the Basin will require the same procedures as its original adoption including a resolution of intent, public notifications, preparation and participation of interested parties, hearing requirements, and the opportunity for landowners to protest. If landowners whose land value exceeds 50% of the value of all land covered by the Plan submit protest against its adoption, then it cannot be adopted or reconsidered for one year.

The current Basin Plan identifies numerous management activities that are needed for the basin, including the need to establish funding and inter-agency coordination. The Plan does not, however, include management activities that are compulsory on those who pump groundwater. Likewise, the current Basin Plan does not include an actual funding plan or enforcement provisions. Consequently, as an example, the Flood Control District cannot require metering or monitoring of wells under the existing Basin Plan, which should be included in a more robust AB 3030 Plan to improve the ability to promote groundwater management.

The process and timing of adopting a more robust AB 3030 Plan needs to be considered concurrent with the consideration of a governance structure. Currently, the Flood Control District is the governing agency and your Board is the governing Board of the existing AB 3030 Plan. The Public Works Department is implementing and providing commensurate services through the various elements of the Basin Plan; for example, the feasibility studies on supplemental water. The specific timing and approach for adopting a more robust AB 3030 Plan will need to consider the transition to a groundwater management district. Should a more robust plan be prepared and adopted by the Flood Control District prior to the creation of a new groundwater management district, or, should it be prepared and adopted by the new groundwater management district if one is created? This staff report does not address the timing, process and adoption of a more robust AB 3030 Plan because clarity on future governance is needed. Once the options for future governance have been narrowed to a few alternatives, then the transition and adoption of a more robust AB 3030 Plan can be evaluated and considered with those governance options. Governance options are discussed further under Goal #2 and in Attachments "A" and "C."

The following table that identifies nine (9) objectives that are important for a more robust AB 3030 Plan.

Objective	Water Code Sections (WCS)
1(A) - Ensure that the development of a more robust AB3030 Plan includes participation of interested landowners and their support so that a majority protest does not result.	WCS 10753.6(c)(2) Plan update cannot be adopted if protests are submitted from landowners with greater than 50% of assessed value of land.
1(B) - Ensure that the development of a more robust AB 3030 Plan does not create obligations or impacts that would trigger an adjudication of the Basin.	WCS 10753(a) A more robust AB3030 Plan cannot be adopted and implemented by a local agency in a basin that is subject to a court order, judgment or decree.
1(C) - Ensure that the development of a more robust AB 3030 Plan includes a comprehensive funding plan.	WCS 10753.7 and 10754 et. Seq. To implement the more robust AB3030 Plan budgets are needed.
1(D) - Ensure that the development of a more robust AB 3030 Plan includes a proposition for registered voters to authorize the ability to generate revenues.	WCS 10754.3 Majority vote in favor in an election of registered voters is required.
1(E) - Ensure that the development of a more robust AB 3030 Plan provides for the adoption of rules and regulations by the District.	WCS 10753.9 Implementing agencies must adopt rules and regulations to implement and enforce the AB3030 Plan.
1(F) - Ensure that the more robust AB 3030 Plan is acceptable to the Board of Supervisors, acting on behalf of the Flood Control District.	WCS 10750.7 A more robust AB3030 Plan cannot be adopted and implemented by a local agency in the service area of another entity without the agreement of the other entity.
1(G) - Develop more robust technical plan components.	WCS 10753.9 The Plan needs to have more robust technical components to adopt robust rules and regulations.
1(H) - Clearly identify the Sequencing of Issues and Decision-Making.	Developing a more robust AB3030 Plan requires addressing many issues, and many future decisions. Sequencing or flowcharting those decisions in a more robust plan will help with clarifying future steps.
1(I) – Ensure that the Plan provides for coordination with other Agencies and other efforts.	Identifying in the plan how coordination will occur with other entities and other efforts will be important for implementing the AB3030 Plan.

See Attachment “B” for more detailed discussion of these objectives.

Goal #2 - Establish Fair Representation on the Groundwater District’s Governing Board

The district options included in Attachment “A” each have governing boards, but how they are formed is different. Some are established by existing legislation, and others require special legislation. Some boards are elected by landowners, some are elected by registered voters, some are appointed, and some are hybrids including elected and appointed board members.

Attachment "A" options include specific examples of existing groundwater management districts. In a more general sense, these options can be categorized into "dependent districts", "independent districts" and "quasi-districts." Attachment "C" provides a greater level of discussion on these categories, and points of discussion that your Board may wish to consider. The purpose of discussing these categories is to determine whether any of the categories might be eliminated from future consideration, or alternatively, so preferences or priorities can be discussed in order to help focus on a few options that can then be evaluated in greater detail during "next steps."

Some discussion has also occurred regarding the formation of a Joint Powers Authority, or JPA. A JPA involves representatives of multiple agencies to carry-out common functions, such as the San Luis Obispo County Integrated Waste Management Authority (IWMA). Although staff believes that a JPA is worthy of consideration in the future for the Basin, the governance options that are under consideration at this time specifically address the unincorporated area covered by the Flood Control District's existing AB 3030 Plan. Once the future governance of the unincorporated area is determined and a more robust AB 3030 Plan is adopted, then it may be beneficial to consider a JPA with the City of Paso Robles and others to provide for a greater overall coordination of basin management activities. Staff has received no input from the City of Paso Robles or others that they would be interested in developing a JPA at this time so that they can be directly involved in groundwater management for the unincorporated area.

In addition, an application has been submitted to the Local Agency Formation Commission (Lafco) by persons interested in forming a California Water District. Staff has met with Lafco staff to discuss how Lafco might proceed with the application while your Board and stakeholders are also considering governance options. We will continue to coordinate our efforts with Lafco staff during the overall deliberation of options.

Lastly, special legislation has been part of discussions of the BRC and it is a consideration for developing a governance structure. During meetings with the BRC and other stakeholders, discussion has considered whether special legislation may be beneficial to create a governance option that addresses the unique concerns expressed by stakeholders. At their meeting of September 19, 2013 the BRC developed a general consensus in support of its Solution Committee "Attachment D" as a preference or priority for future governance. The BRC Chairman, Larry Werner, will provide you with a report at your meeting on the BRC discussion. Next steps that your Board may wish to consider is to direct staff to develop additional details on specific options and to provide options for a legislative platform in the event that special legislation is considered.

Case Review – Adjudication of the Santa Maria Groundwater Basin (SMGB)

The SMGB adjudication was initiated in a lawsuit known as *Santa Maria Valley Water Conservation District vs. City of Santa Maria, et al.* (1997). In 2005, the some of the parties entered a "Stipulated Judgment" which included numerous provisions. The court adopted its "Judgment" in 2008. The basin was divided into three (3) sub-areas, or "Management Areas," determined based on differing physical conditions. Each Management Area has a formally established "Technical Group" which are responsible for preparing an Annual Report to the court based on the stipulations and judgment. In 2013, the Nipomo Mesa Management Area (NMMA) completed its 5th Annual Report Calendar Year 2012.

Pumping within the NMMA has resulted in declining groundwater levels, supplemental water has been identified as one of the physical solutions, and pumping restrictions have been established. The following is a summary of the NMMA Annual Report with comparative discussion of how an annual report might be developed for the PRGWB.

Chapter – Description	NMMA Program of SMGB	Paso Basin
Executive Summary	Background, Findings and Recommendations	Would be similar.
1. Introduction	Summary of adjudication and what the NMMA was directed to do by the Court.	Would summarize the AB 3030 Plan, its objectives and rules and regulations.
2. Basin Description	Describes physical setting, land-use, climate, hydrology and boundaries etc...	NMMA is one of 3 subareas for SMGB; the Paso Basin has 8 sub-areas.
3. Data Collection	Ten (10) data elements covering groundwater levels, water quality, rainfall, pumping and others. “Stipulating” parties are required to provide data at no charge.	Improving data collection for the Paso Basin will require a more robust AB 3030 Plan and rules and regulations.
4. Water Supply and Demand	Program reports pumping, surface water use, recycled water and supplemental water; and estimates historical, current and projected demand.	Annual reporting will need to be developed and included in a more robust AB 3030 Plan.
5. Hydrologic Inventory	Program evaluates factors affecting the quantity of water in storage (inflows and outflows) and discusses changes in groundwater storage but cannot calculate.	Improving storage estimates will need to include quality considerations since changes in quality are as much a barometer of basin health as are changes in storage.
6. Groundwater Conditions	Technical evaluations of groundwater elevations, gradients, flows between subareas and quality.	Improving technical evaluations should include rates of change. Is the decline in basin groundwater levels getting faster or slower?
7. Analysis of Water Conditions	Describes what Chapters 3-6 mean in terms of basin management and requirements of the adjudication.	Basin Management Objectives are included in the existing plan, should be made more robust, and will be the basis for this analysis.
8. Other Considerations	Identifies “Institutional and Regulatory Challenges”	Might include similar issues; how about the portion of the basin that is within Monterey County?
9. Recommendations	Funding; status of prior recommendations; and technical recommendations	Pumping from the NMMA is about 10-15% of the estimated perennial yield of the Paso Basin; the nature and extent of recommendations that develop for the Paso Basin will be significantly greater in number and complexity.

Several points for the SMGB can be compared to the Paso Basin:

- Subareas - SMGB has 3 subareas, each managed separately; the Paso Basin has 8 subareas and no determinations have been made regarding how each subarea might be managed.
- Supplemental Water – Supplemental water exists in two subareas of the SMGB and is currently in construction for the third subarea; Supplemental Water for the Paso Basin has already been approved for purveyors - Nacimiento (Paso Robles, Templeton CSD and Atascadero MWC) and State Water (Shandon). Feasibility of additional supplemental supplies is in the RFQ phase.
- “Key Well Indexes” – “Triggers” have been established for the NMMA which require voluntary and mandatory conservation by the purveyors when well levels fall to pre-defined levels – i.e., when well levels drop to a specified level, conservation is then triggered; no such triggers exist in the existing Basin Plan. These voluntary and mandatory consideration measures were determined and agreed to by the parties based on the parties’ respective water rights. Those water rights required a legal determination and the NMMA is ultimately administered and overseen by the court. Attempting to institute a similar structure within the Paso Robles Groundwater Basin would be difficult absent court intervention.
- Pumping Baselines - The “baseline” for pumping by the non-purveyors; Conoco Phillips and other overlying pumpers (agriculture and others) has not yet been established. Although maximum pumping limits have been established at 110% of the baseline, the baseline will only be established after the Nipomo Supplemental Water Project is implemented, which is currently in construction. Therefore baselines for NMMA can be determined soon; no baselines exist for the Paso Basin.
- Funding - The annual budget for the NMMA is just over \$150,000 per year. Since the Paso Basin is significantly greater in size and complexity, with 8 subareas, the costs of a groundwater district will be more expensive. Proposition 218 provides for multiple methods in developing revenues depending on the management activities. In addition, any source of supplemental water that might be developed would need to have its own funding plan and Proposition 218 process.

Water Allocations

On August 27, 2013, your Board also directed staff to return to discuss water allocations. When dealing with water from a groundwater basin, the concept of a water allocation most often refers to the amount of water that a particular pumper has a right to take from the basin. This is a legal determination that requires the evaluation of evidence of past pumping practices, the historical use of the water, the safe yield of the basin, and the types of other users within the basin, among other things. Such evidence must be evaluated against complex constitutional and statutory provisions, including case law interpreting those provisions that is sometimes a century old. This process is adjudicatory in nature and, as a result, is determined by a court. Because of this legal landscape, attempting to allocate water within the Paso Robles Groundwater Basin through an AB 3030 plan is likely both legally and practically infeasible. This type of allocation of water rights differs from regulations that would limit pumping through an AB 3030 Plan. The Water Code provides that an agency that adopts a Groundwater Management Plan pursuant to AB 3030 has the authority to limit or suspend extractions if it is determined through study and investigation that the groundwater replenishment programs or other alternative sources of water supply have proved insufficient or infeasible to lessen the demand for groundwater. If instituted, these limits on pumping would not allocate water rights but would address shortages through specific demand management practices.

OTHER AGENCY INVOLVEMENT/IMPACT

Local agencies, such as the City of Paso Robles, Templeton Community Services District and Atascadero Mutual Water Company, and advisory groups, such as the Water Resources Advisory Committee, and other community, agricultural and economic advisory committees, are engaged in the short, medium and long term efforts associated with management of the Basin.

Coordination with the Administrative Office, Agricultural Commissioner's Office, County Counsel, Planning and Building Department and Public Health Department is also occurring on issues associated with the Paso Basin.

The Blue Ribbon Committee is generally in consensus of Attachment "D" as the preferred approach or priority to developing a future governance structure.

FINANCIAL CONSIDERATIONS

Efforts associated with implementation of the Basin Plan are included in Fund 19 of the Flood Control District, whose revenue source is Flood Control District Reserves. The Flood Control Fund 19 budget for the current fiscal year is \$101,468, and approximately \$82,000 has been expended or encumbered. If the level of effort for the Basin continues, Fund 19 will need a mid-year budget adjustment.

It is anticipated that an inter-fund transfer from District reserves to Fund 19 will be submitted for your Board's consideration in the near future.

RESULTS

Directing staff to proceed with Basin management efforts will help to ensure the Basin is effectively managed so it can remain a reliable source of water for all of its users, contributing to safe, healthy, livable, prosperous and well-governed communities.

File: CF 500.132.01 Groundwater Study - Paso Robles Management Plan

Reference: 13OCT01-BB-1

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ATTACHMENTS

1. Attachment A – Special District Comparison
2. Attachment B – AB 3030 Goals and Objectives
3. Attachment C – District Representation Goal and Points of Discussion
4. Attachment D – Blue Ribbon Committee Preferences